

Members

Rep. Vernon Smith, Chairperson  
Rep. Linda Lawson  
Rep. Carolene Mays  
Rep. John Ulmer  
Rep. Ralph Foley  
Rep. Andrew Thomas  
Sen. David Long, Vice-Chairman  
Sen. Richard Bray  
Sen. R. Michael Young  
Sen. Anita Bowser  
Sen. John Broden  
Sen. Timothy Lanane



## INTERIM STUDY COMMITTEE ON JUVENILE LAW AND CORRECTIONS ISSUES

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### MEETING MINUTES<sup>1</sup>

**Meeting Date:** October 9, 2003  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 130  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 4

**Members Present:** Rep. Vernon Smith, Chairperson; Rep. Carolene Mays; Rep. Ralph Foley; Sen. David Long, Vice-Chairman; Sen. Richard Bray; Sen. R. Michael Young.

**Members Absent:** Rep. Linda Lawson; Rep. Andrew Thomas; Rep. John Ulmer; Sen. Anita Bowser; Sen. John Broden; Sen. Timothy Lanane.

Rep. Smith opened the meeting at 1:20 p.m.

#### Review of Minutes from Previous Meeting:

The Committee reviewed and approved the minutes of the meeting held on September 25<sup>th</sup> at the Westville Correctional Facility.

#### Juvenile Law Commission:

Sen. Long updated the Committee on the activities of the Juvenile Law Commission. He told the Committee members that the Commission does not have an expiration date so it is not required to have final recommendations by November. He also indicated that the Commission is reviewing a proposal to amend state juvenile law so that it complies with federal law. The Commission is currently waiting for an estimate of the costs associated with this proposal compared with federal revenues that the state and local governments would forgo if state laws are not in compliance. He also indicated that the Commission would meet again in November.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

### **Tobacco Trafficking:**

Rep. Smith told the Committee that it would examine issues associated with the Department of Correction's (DOC) current ban on tobacco products.

Mr. Douglass Thompkins, a doctoral student in sociology at the University of Illinois at Chicago, told the Committee members that his dissertation topic addresses the costs and benefits of banning tobacco in Indiana's jails and prisons. Mr. Thompkins' testimony is summarized in Exhibit A of these minutes.

During his presentation and general discussion with Committee members, Mr. Thompkins made the following points:

The benefits identified with the ban on tobacco include:

- Reduced demand for illegal drugs and tobacco products.
- Reduced medical expenses for treating smoking-related diseases.
- Increased control over the black market.
- A response to lawsuits filed by offenders about damages of secondhand smoke.

Problems associated with the tobacco ban include:

- Custody staff are likely to engage in tobacco trafficking.
- Offenders with clear conduct reports violate tobacco bans and serve additional time.
- Offenders who violate tobacco bans will also be denied eligibility for educational programs, institutional work or housing privileges.
- Offender lawsuits over secondhand smoke have yet to be found in favor of offenders who filed the lawsuits.

By denying good conduct days, offenders spend more time in prison. Based on his interviews with 43 ex-offenders in a nonrandomized selection process, he estimated that one million days of good conduct were denied for violating all institutional rules. He emphasized that his conclusions are based on raw data and subject to revision. Of these one million days, he estimates that at least 250,000 earned good conduct days were denied because of tobacco violations. Based on a daily per diem of \$54, the added cost to the state for the tobacco ban can be estimated at \$13.5 M.

He suggested that, as an alternative policy, the Department of Correction could consider lifting the ban on tobacco or at the least allow for designated smoking areas for offenders.

Testimony of DOC Officials: Randy Koester, Deputy Director for the Department of Correction, Dean Rieger, Director of Medical Services for the Department of Correction, Al Parke, Superintendent of the Putnamville Correctional Facility, and Jerry Vance, Substance Abuse Program Director, identified the following benefits to the tobacco ban in prisons:

- Random drug tests of the adult corrections population have declined from 9% to 3% of the population tested; drug use among offenders on parole has also declined.
- Facilities are cleaner due to the absence of smoke.
- Fewer incidence of fires being set.
- Reduced medical treatment costs in the long run.
- Second-hand smoke litigation by the Indiana Civil Liberties Union was dropped after the smoking ban was introduced.

DOC representatives also made the following points:

- They questioned how Mr. Thompkins estimated that 1 million good conduct days were

- denied by the Department of Correction the previous year.
- Employee suspensions due to tobacco trafficking have been scheduled to minimize the overtime that security staff are required to work.
- If designated smoking areas are used, offenders will smuggle cigarettes into the sleeping areas.
- Spending in commissaries has not been affected by the ban on tobacco. The offenders substitute other products for the cigarettes.
- If the tobacco ban is lifted, then DOC will likely face more litigation issues for secondhand smoke.
- Few correctional officers are involved in tobacco trafficking. At Putnamville, about 10 officers have been caught trafficking tobacco.

#### **Medical Issues:**

Chairman Smith turned the Committee's attention to the issue of medical needs of offenders. He asked Mr. Koester if DOC has changed any of its policies concerning supplying medical services to offenders in prison. Mr. Koester indicated that the DOC has not changed any policies, but he and another Deputy Commissioner will be meeting about this issue in the near future.

#### **Final Meeting and Adjournment:**

Rep. Smith told the members that the final meeting of the Committee would be on Monday, October 27, at 10 a.m. He indicated that the following issues still needed to be addressed by the Committee:

- Juvenile Law Commission
- County payments to the Department of Correction for juvenile housing.
- Medical issues
- Dealing with tobacco including whether the Committee should issue a nonbinding resolution to the General Assembly favoring a demonstration project providing designated smoking areas or instituting a Class D Felony for prison employees to sell tobacco products in prisons

The meeting was adjourned at 3:20 p.m.

## Exhibit A

### A. Justification for Tobacco Ban

#### 1. Suits filed by Offenders second hand smoke

Judicial Decisions have been mixed when considering the Courts consider State claims that Corrections Officials are immune from being sued in cases involving second hand smoke

The 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Circuit Courts of Appeal have ruled in favor of Corrections Officials in every case brought before the Court by an offender raising the second hand smoke issue

#### 2. Cost to State for Medical Expenses smoke related illnesses

#### 3. Increased Control Over Institution Black Market

### B. Benefits of Tobacco Ban for Department

#### 1. Reduction in demand for some illegal drugs, specifically marijuana Decreases in number of positive drug test randomly administered to offenders

#### 2. Some States have noticed a decreased in the demand for tobacco products

- a. Offenders were afforded access to Nicotine Patches
- b. Group counseling was made available for both staff and offenders on a regular basis

### C. Problems Associated with Tobacco Ban

It is estimated that 85 % of all corrections facilities where tobacco has been banned experience most of the same problems associated with the illegal trafficking and use of Tobacco Products

#### 1. Increase in Black Market Activity

#### 2. Increase in number of Staff who engaging in Trafficking

- a. Data suggest that a staff member can make as much as \$100.00 for bring a carton of cigarettes to an offender
- b. Many staff members do not see Tobacco as something illegal. Process is similar to events linked to Prohibition
- c. Data suggest that guards have formed Tobacco cliques. Organized groups of guards who traffic in Tobacco products, lighters and rolling papers, and who protect those offenders working for them from other offenders
- d. Staff do not face a criminal conviction if caught trafficking in Tobacco products
- e. Data suggest that where DOC Staff have been charged with trafficking in illegal drugs might get jail time none have received jail time for Tobacco.
- f. Staff in other States have been charged with trafficking in Tobacco, arrested, and eventually sentenced

#### 3. Increase in Number of Offenders engaging in Black Market

#### **D. Cost to Persons Engaged in Tobacco Black Market**

##### **1. Staff**

- a. Staff realize that a trafficking charge associated with tobacco does not carry a felony drug conviction
- b. Most staff caught trafficking in tobacco products or suspected of doing the same are either transferred to another post inside the facility, to another facility, or they are allowed to resign in exchange for information

##### **2. Offenders**

People who smoke suffer from nicotine addiction and little has been done to treat this addiction. Few if any counseling programs exist and nicotine patches were made available on commissary but offenders can not afford the \$30-40.00 cost for the patch

- a. Offenders are losing Good Time Days. Any where from 30-60 days for the first offense, 60-90 days for the second offense and/or demotion in time class for the third offense. Of course this translates into a longer period of incarceration
- b. Violation of an institutional or departmental rule affects access to educational and treatment related programs. An offenders classification designation is also affected which determines eligibility for programs, institutional work, and certain housing opportunities
- c. There has been an increase in the number of offenders who are being victimized psychologically, emotionally, physically, and sexually

#### **E. Cost to Department/Institutions**

Most corrections facilities around the country where tobacco has been banned experience similar problems

##### **1. Increase in the level of institutional violence**

- a. Increase in the number of staff attacked by offenders
- b. Increase in the level of fights and/or stabbing between offenders
- c. Increase in level of offender robberies and theft

##### **2. Increase in demand for prison space**

- a. Data suggest that last year 1 million good time days were taken from offenders violating institutional rules
- b. Data suggest that 250,000 actual earned good time days were taken from offenders
- c. It has been suggested that 30-40 % of all conduct reports and lost good time days are directly related to tobacco rule violations
- d. Data has not yet been compiled examining the number of conduct reports and good time days lost that are associated with tobacco such as fight, cell robberies or theft.
- e. Increase in number of offenders requesting protective custody or transfers to other housing facilities

### **F. Cost to Families of Offenders**

1. Offenders are kept in prison beyond original release date
2. Increased levels of stress
  - a. Offenders request/demand more money to pay tobacco debts
  - b. Greater concern that family members will be hurt while in prison

### **G. Cost to State/Tax Payers**

1. Increased Demand on Tax Dollars
  - a. The cost to house an offender in the state of Indiana is between \$54-55.00 per day
  - b. Data suggests that 1 million good time days were taken from offenders last year
  - c. Data suggests that 250,000 actual earned good time days were taken from offenders
  - d. At \$54.00 per day, the 250,000 good time days that were actually taken have increased the demand on tax dollars in the amount of 13.5 million dollars.
  - e. The eventually cost to tax payers associated with the million days of good time taken from offenders could be 54 million dollars for one year of lost good time.
  - f. The tobacco ban affects the transition process because offenders must keep a clear conduct record and/or remain in time class one to be eligible for educational and treatment programs part of the rehabilitation/transition process
  - g. There is the possibility that medical cost associated with smoking could still increase in spite of the tobacco ban because offenders are using the covers from toilet paper and pages from magazines to roll tobacco. There is also the possibility of germs being spread because offenders are sharing cigarettes at a higher rate today than before the ban

## H. Policy Recommendations

Both Supreme Court Justice Kennedy and Judge William Young of Marion County Court 20, which handles the major drug cases, have called for a change in drug policies and the elimination of mandatory minimum sentences for certain drug related charges.

State Representative B. Patrick Bauer (D-South Bend), has been quoted as saying "Many of these prisoners are drug offenders who are not dangerous to society. They are only dangerous to themselves. We put them in prisons, which are known as schools of crime, they come out hardened and two of three go back. We're trying to stem the tide of building prisons. It's a tax savings, but also perhaps we need to focus more on rehabilitation."

1. What does this have to do with the Tobacco Ban?
  - a. Whether a person spends time in prison because they broke the law or an institutional rule associated with the tobacco ban, the effect is the same, the person is in prison and this requires tax dollars to house, feed, and cloth the offender. Because offenders are kept in prison beyond their original release date, the tobacco ban has had the effect of criminalizing behavior associated with the tobacco ban.
2. Recommendations
  - a. Short of lifting the tobacco ban, Decriminalizing Tobacco Products, designate smoking areas within correctional facilities. Other State agencies/buildings have smoking areas
  - b. Provide classes for offenders on a regular basis to help them overcome their nicotine addiction
    - i. The program would have to be open to all offenders regardless of time class, because present policy would restrict many offenders from participation because of conduct reports, some of which are associated with tobacco
  - c. Make Nicotine Patches available for Offenders
    - i. Most offenders would not be able to afford the \$30-40.00 cost of the patches
    - ii. The department could seek out donations of patches from the different Cancer societies and non-smoking organizations
  - d. Initiate an In-dept Study examining the Cost and Benefits associated with the Tobacco Ban
    - i. My own research suggests the need for a national study examining this area because the cost appear to far out weigh any benefits associated with a total tobacco ban within correctional facilities

In closing, In September 2003 the Drug Policy Alliance released a first-of-its-kind report detailing the numerous drug policy reforms that have taken place around the country in recent years. The report: *State of the States: Drug Policy Reforms, 1996-2002*, found more than 150 changes in state legislation on a range of issues, including: advancing alternatives to incarceration, protecting medical marijuana patients and providers, expanding sterile syringe availability, and restoring benefits and voting rights to former drug offenders. <sup>46</sup>

States Have Passed Drug Policy Reform Legislation  
between 1996 and 2002

These reforms reflect an emerging "harm reduction" consciousness among the public and legislatures: the awareness that not just drug abuse, but also misguided drug policies, can cause grave harms to individuals and society - and that the ideal policies are those which reduce both kinds of harm as effectively and humanely as possible.

While we see a change in how we are treating drug offenders because of the demand on tax dollars and the belief that we can make use of other policies such as treatment and home arrest, there is an increase in the use of the tobacco ban and the consequences of this ban are having the same effect as many of the drug policies we are now seeing reformed and/or repealed. The outcome is the same, offenders are kept in prison for longer periods of time and the cost to tax payers associated with housing offenders is continuing to increase.